

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Diana Arreaga	Team: Squad #6	CCRB Case #: 201606695	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 07/31/2016 10:40 PM	Location of Incident: In front of 1147 Reverend James Polite Avenue	Precinct: 41	18 Mo. SOL 1/31/2018	EO SOL 1/31/2018	
Date/Time CV Reported Thu, 08/04/2016 1:16 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 08/04/2016 1:16 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Ahsan Zafar	03773	949822	041 PCT
2. SGT Derwent Williams	01719	939693	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Derwent Williams	Abuse: Sergeant Derwent Williams stopped § 87(2)(b)	
B.POM Ahsan Zafar	Abuse: Police Officer Ahsan Zafar stopped § 87(2)(b)	
C.POM Ahsan Zafar	Abuse: Police Officer Ahsan Zafar searched § 87(2)(b)'s bag.	
D.POM Ahsan Zafar	Abuse: Police Officer Ahsan Zafar searched the vehicle in which § 87(2)(b) was an occupant.	
E.POM Ahsan Zafar	Abuse: Police Officer Ahsan Zafar frisked § 87(2)(b)	
F.POM Ahsan Zafar	Abuse: Police Officer Ahsan Zafar searched § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(2)(g), § 87(4-b)		

§ 87(2)(g)

Case Summary

On August 4, 2016, § 87(2)(b) filed this complaint via telephone with the Civilian Complaint Review Board (CCRB).

On July 31, 2016, at approximately 10:40 p.m., Sergeant Derwent Williams and Police Officer Ahsan Zafar of the 41st Precinct stopped § 87(2)(b) in front of 1147 Reverend James Polite Avenue in the Bronx, for allegedly riding past three red stop lights (**Allegations A and B**). Police Officer Zafar searched § 87(2)(b)'s black plastic bag which contained chicken cutlets in saran wrap (**Allegation C**). Police Officer Zafar allegedly searched a black pouch that was on the back of § 87(2)(b)'s bicycle (**Allegation D**). Police Officer Zafar then frisked § 87(2)(b) near his waistband area and shorts pockets (**Allegation E**) and allegedly searched § 87(2)(b)'s shorts pockets (**Allegation F**). § 87(2)(b) was not arrested or issued a summons as a result of this incident and was released from the scene.

§ 87(2)(g), § 87(4-b)

No video footage was found regarding this incident. This case was consulted with APU Attorney Suzanne O'Hare and APU Attorney Simone Manigo.

Mediation, Civil and Criminal Histories

- Mediation was offered to but rejected by § 87(2)(b) because he wanted an investigation.
- As per the NYC Comptroller's Office, as of October 4, 2016, § 87(2)(b) has not filed a Notice of Claim regarding this incident (Board Review 01).
- § 87(2)(b)

Civilian and Officer CCRB Histories

- § 87(2)(b) has no prior CCRB complaints.
- Sergeant Williams has been a member of the NYPD for 11 years and has had 17 allegations in seven cases with two substantiated allegations (see officer history).
 - In CCRB case #201404505, allegations of vehicle search and seizure of property were substantiated against Sergeant Williams and he received Command Discipline B. § 87(2)(g)
- Police Officer Zafar has been a member of the NYPD for six years and has had 21 allegations in 11 cases with three substantiated allegations (see officer history).
 - In CCRB case #201307133, allegations of question and frisk were substantiated against Police Officer Zafar and he received instructions. In CCRB Case #201404505, an allegation of a vehicle search was substantiated against Police

Officer Zafar and he received Command Discipline A. § 87(2)(g)

Potential Issues

- § 87(2)(b) stated that three male witnesses were present during his interaction with Sergeant Williams and Police Officer Zafar. He stated that two of the individuals did not want to participate in the investigation and he was unable to provide a name or any contact information for the third individual. Therefore, the CCRB was unable to contact the individuals present in order to obtain witness statements regarding this incident.
- § 87(2)(b) was contacted in order to obtain a follow-up statement regarding this incident. Between October 21, 2016, and October 31, 2016, three phone calls were made to § 87(2)(b) and on each occasion the call went straight to voicemail. On October 24, 2016, a please call letter was sent to § 87(2)(b) which was not returned by the U.S. Postal service and an email was sent which was not returned by the server as undeliverable. Searches of the NYC Department of Correction and NYS Department of Corrections databases were conducted revealing that § 87(2)(b) was not incarcerated. Therefore, the CCRB was unable to obtain a follow-up statement from § 87(2)(b)

Findings and Recommendations

Explanation of Subject Officer Identification

- Sergeant Williams and Police Officer Zafar stated that it was a collective decision to stop § 87(2)(b). Therefore, stop allegations are pleaded against both officers.
- Police Officer Zafar stated that he was the primary contact officer and acknowledged speaking to, frisking § 87(2)(b) and making physical contact with § 87(2)(b)'s plastic bag. Therefore, Allegations C, D, E, and F, are pleaded against Police Officer Zafar.
- § 87(2)(g), § 87(4-b)

Allegations not pleaded

- § 87(2)(b) alleged that Police Officer Zafar questioned him about his prior arrest. He did not go into detail as to what he was asked since his criminal case was still open and he wanted to consult an attorney prior to giving any statement related to his arrest. Therefore, a question allegation is not pleaded.

Allegation A – Abuse of Authority: Sergeant Derwent Williams stopped § 87(2)(b)

Allegation B – Abuse of Authority: Police Officer Ahsan Zafar stopped § 87(2)(b)

It is undisputed that Sergeant Williams and Police Officer Zafar stopped § 87(2)(b). Whether the officers had reasonable suspicion to do so remains in dispute.

On August 8, 2016, § 87(2)(b) was interviewed at the CCRB (Board Review 03). § 87(2)(b) stated that he was informed by Police Officer Zafar that both he and Sergeant Williams had observed him ride past three red lights while riding his bicycle on Prospect Avenue. § 87(2)(b) did not recall if he had ridden past the three red lights. He told the officers if he was seen

riding past the red lights then he should be issued a summons. § 87(2)(b) could not be contacted for a follow-up statement to establish if he had committed any other vehicle traffic infractions.

On August 19, 2016, Police Officer Zafar was interviewed at the CCRB (Board Review 04) and re-interviewed on November 17, 2016 (Board Review 05). Police Officer Zafar stated that both he and Sergeant Williams observed § 87(2)(b) ride past three red lights located on East 163rd Street, East 164th Street, and East 165th Street and Prospect Avenue while on his bicycle.

§ 87(2)(b) briefly stopped at each red light and continued to ride on without making a complete stop at each red light. Police Officer Zafar stated § 87(2)(b) was also seen riding his bicycle without a helmet. Aside from these two infractions, Police Officer Zafar did not see § 87(2)(b) commit any other vehicle infractions. No summonses were issued to § 87(2)(b) as he was warned and admonished.

On September 8, 2016, Sergeant Williams was interviewed at the CCRB (Board Review 06). Sergeant Williams stated that he observed § 87(2)(b) ride past the red light located on East 162nd Street and Prospect Avenue. He informed Police Officer Zafar of his observation. Both officers then observed § 87(2)(b) continue to ride past the red lights on East 163rd Street and East 164th Street. Sergeant Williams stated that § 87(2)(b) was not wearing a helmet while riding his bicycle and did not have any reflective lights on his bicycle. He stated that § 87(2)(b) could have been issued a summons for failing to stop at a red light, not wearing a helmet, and/ or reckless driving since a bicycle was considered a motor vehicle. Police Officer Zafar instead used his discretion and released § 87(2)(b) on a warning.

In this case, Police Officer Zafar and Sergeant Williams both corroborated that § 87(2)(b) was seen riding past three red lights, although § 87(2)(b) did not recall doing so. Police Officer Zafar and § 87(2)(b) corroborated that § 87(2)(b) was seen riding without a bicycle helmet. Since § 87(2)(b) could not be contacted for a follow-up statement the investigation was unable to determine if § 87(2)(b) acknowledged committing this or any other vehicle traffic infractions.

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b).

Allegation C – Abuse of Authority: Police Officer Ahsan Zafar searched § 87(2)(b)'s bag.

It is disputed whether Police Officer Zafar had consent to search § 87(2)(b)'s black plastic bag.

§ 87(2)(b) stated that he had a black plastic shopping bag on his bicycle handle which contained one packet of chicken cutlets (Board Review 03). He explained that the shape of the bag looked as if it contained produce inside. § 87(2)(b) could not be contacted for a follow-up statement to obtain a further description of the shape of the bag. Police Officer Zafar patted down the exterior of the plastic bag without his consent.

Police Officer Zafar stated that he observed the plastic bag on the bicycle handle approximately five feet away from where § 87(2)(b) was standing (Board Reviews 04 and 05). He described the shape of the bag as rectangular and believed that the bag may have contained a firearm due to § 87(2)(b)'s prior arrest history. Police Officer Zafar was unable to provide a further description of the bag aside from being rectangular. He stated that the only reason he wanted to look inside of the bag was because of § 87(2)(b)'s prior history. Police Officer Zafar

asked § 87(2)(b) what was inside of the bag. § 87(2)(b) provided Police Officer Zafar with consent to search the plastic bag by stating, “It’s chicken. You can look inside.” Police Officer Zafar did not know if Sergeant Williams heard § 87(2)(b) provide the consent. He did not relay to Sergeant Williams that § 87(2)(b) provided consent to search the bag. Police Officer Zafar looked inside of the bag and confirmed that it contained chicken cutlets in saran wrap.

Sergeant Williams explained that the plastic bag, which § 87(2)(b) was holding, contained an item, which based off its positioning, created an angled point, which he assumed to be a weapon (Board Review 06). He was unable to provide a further description of the shape of the bag. Sergeant Williams stated that in his previous experiences individuals were arrested for hiding a firearm in a plastic bag. He stated that § 87(2)(b) opened the plastic bag on his own and showed it to Police Officer Zafar to prove that it contained chicken.

Consent to a search is voluntary when it is a true act of will [and] an unequivocal product of an essentially free and unconstrained choice. People v. Richardson, 645 N.Y.S.2d (1996) (Board Review 07). An officer acting on reasonable suspicion that criminal activity is afoot and on an articulable basis to fear for his own safety may intrude upon the person or personal effects of the suspect only to the extent that is actually necessary to protect himself from harm while he conducts the inquiry. People v. Graham, 2015 NY Slip Op 09442 (Board Review 08).

In this case, all three parties interviewed provided different narratives of the incident involving the plastic bag. § 87(2)(b) alleged that Police Officer Zafar looked inside of the plastic bag without his consent. Police Officer Zafar alleged that § 87(2)(b) gave him consent to search the bag. Sergeant Williams alleged that § 87(2)(b) opened the plastic bag on his own and showed it to Police Officer Zafar.

Police Officer Zafar was unable to provide a description of the bag aside from a rectangular shape. Any item could have created this rectangular shape. Sergeant Williams was unable to provide a further description of the plastic bag aside from an item inside of the bag creating an “angled point.” In this case, it was a packet of chicken in saran wrap that created the rectangular, angled shape. § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Abuse of Authority: Police Officer Ahsan Zafar searched the vehicle in which § 87(2)(b) was an occupant.

It is disputed whether Police Officer Zafar searched a black pouch located on the rear of § 87(2)(b)s bicycle.

§ 87(2)(b) stated that Police Officer Zafar approached the black pouch located on the rear of his bicycle which contained a cellphone charger and his keys (Board Review 03). Police Officer Zafar proceeded to open the pouch and touched the contents inside of the pouch.

Police Officer Zafar stated that he did not recall seeing a pouch on § 87(2)(b)s bicycle (Board Review 04).

Sergeant Williams stated that he did not see a pouch on § 87(2)(b)s bicycle or on his person (Board Review 06).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation F – Abuse of Authority: Police Officer Ahsan Zafar searched § 87(2)(b)

It is disputed whether Police Officer Zafar searched through § 87(2)(b)'s shorts pockets. § 87(2)(b) stated that after Police Officer Zafar frisked the exterior of his shorts he then into his shorts pockets (Board Review 03).

Police Officer Zafar stated that he did not search § 87(2)(b)'s pockets because after frisking § 87(2)(b) he felt nothing that would have caused him to enter into § 87(2)(b)'s pockets (Board Review 04).

Sergeant Williams stated that he did not observe Police Officer Zafar enter into § 87(2)(b)
s pockets (Board Review 05).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

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§ 87(4-b), § 87(2)(g)

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Squad: 6

Investigator: _____

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Date

Squad Leader:

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Date

Reviewer: _____

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Date